UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE

XACTDOSE, INC.

Employer

and **Case 33-RC-4615**

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[1] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

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[1] I have carefully considered the record evidence and the brief of the Employer. The Petitioner did not submit a brief.

[2] The parties stipulated that the Employer is an Illinois corporation, engaged in the business of packaging and selling pharmaceuticals at its 722 Progressive Lane, South Beloit, Illinois facility. The parties also stipulated that during the past calendar year, a representative period of time, the Employer purchased and received at its South Beloit, Illinois facility, goods valued in excess of $50,000 directly from suppliers located outside the State of Illinois. Further, they stipulated that the Employer had gross volume of sales from its operations in excess of $500,000. Upon these facts, I find that Xactdose, Inc., is an employer engaged in commerce within the meaning of the Act. The approximate number of employees in the unit found appropriate herein is 39.

3. The labor organization involved claim(s) to represent certain employees of the Employer.[3]

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The sole issue in this case involves the composition of the bargaining unit. The Petitioner seeks a unit of "all full-time and regular part-time production and maintenance and temporary employees employed by the Employer at its South Beloit facility, but excluding all office clerical employees, guards, and supervisors as defined in the Act." The Employer takes the position that all of its "temporary agency employees should be excluded from the unit for two reasons. First, the temporary agency employees do not share a community of interest with regular employees of Xactdose. Second, the temporary employees are traditional temporary employees to be excluded from the bargaining unit." The Employer proposes a bargaining unit of, "all full-time and regular part-time production, quality control, and maintenance employees of the Employer, employed at its South Beloit, Illinois, facility, excluding all office clerical employees, temporary agency employees, temporary employees,[4] guard, supervisors, and

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[3] The parties stipulated that the Petitioner is a labor organization within the meaning of the Act, and I so find. There is no collective-bargaining agreement covering any of the employees in the unit sought in the Petition herein, and the parties are in agreement that there is no contract bar. Furthermore, there is no history of collective bargaining affecting these employees.

[4] The record demonstrates that the Employer, Xactdose, Inc., routinely procures the services of temporary employees from three temporary staffing services, to wit: Ablest Staffing, Furst Staffing and QPS Staffing Services, Inc. The employees sent by any one of these three staffing agencies to work for the Employer at its 722 Progressive Lane, South Beloit, Illinois, facility will be referred to herein as "temporary agency employees," or as "temporaries."

In addition to the "temporaries," the record also reveals that the Employer has, on occasion, hired what it calls "temporary associates." These "temporary associates" are different from "temporary agency employees" in that "temporary associates" were hired directly by the Employer, without having gone going through the services of a staffing agency.

The record is unclear as to whether there are currently any such "temporary associates", and there was virtually no litigation concerning that classification. Accordingly, temporary associates, if any, will be permitted to vote under the Board's challenge ballot procedure.

other employees of the Employer." Contrary to the Employer, the Petitioner maintains that the Employer's "temporary employees" are employed by the Employer, share a community of interest with the Employer's regular employees and, therefore, should be included in the bargaining unit found appropriate herein.

The record establishes that temporaries are, in fact, generally employed by the Employer for an indefinite period of time[5], and they share a community of interest with the Employer's regular employees. Accordingly, and as discussed below, I hold that the "temporaries" working for the Employer at its South Beloit, Illinois, facility shall be included in the unit found appropriate herein.

BACKGROUND:

As noted above, the Employer is engaged in the business of packaging and selling pharmaceuticals at its South Beloit, Illinois, facility. This entails the Employer purchasing bulk solid and/or liquid pharmaceuticals from outside sources and then, within regulatory guidelines established by the United States Food and Drug Administration (FDA), re-packaging the pharmaceuticals in unit-dose containers for use in hospitals, nursing homes, prisons and other places that want the convenience of individual doses. Solid pharmaceuticals, such as capsules, tablets, or gel caps, are received by the Employer in bulk bottles and are then re-packaged in blister packs by Xactdose, Inc. regular and/or temporary employees. These re-packaged bulk pharmaceuticals are then placed in cartons, a hundred unit-doses to a carton, and prepared for re-sale shipping. Similarly, liquid pharmaceuticals are also received by the Employer in bulk and are physically poured into cups or placed into syringes by Xactdose, Inc. regular and/or

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[5] The record demonstrates that the Employer, Xactdose, Inc., is an Employer of the "temporaries" within the meaning of the Act. Further, as the Petitioner seeks to bargain with only the Employer, Xactdose, Inc., and does not seek to bargain with either Ablest Staffing, Furst Staffing or QPS Staffing Services, Inc., there is no need to reach a conclusion as to whether the Employer and the Ablest Staffing, Furst Staffing and QPS Staffing Services, Inc. agencies are joint employers. See: *Outokumpu Copper Franklin, Inc.,* 334 NLRB No. 39 (2001), citing *Professional Facilities Management,* 332 NLRB No. 40 (2000).

temporary employees. These cups and/or syringes are then capped, shrink-wrap sealed, labeled and package-bundled for re-sale and distribution to the Employer's various customers.

The Employer's South Beloit, Illinois, facility is physically located in a stand-alone 20,000 square foot building. The building is sub-divided into five separate "fill-rooms," with each fill room measuring approximately 20 feet long by 20 feet wide. The five fill-rooms are connected to one another by a hallway, and the pharmaceutical re-packaging work described above is undertaken in one of the Employer's five fill-rooms. Packaging lines run out of each fill-room into other areas of the facility, including into the warehouse area. In addition, the facility also has a front office, as well as a break room area.

The Employer's workforce is comprised of "regular full-time associates"[6], "regular part-time associates[7] and "temporary agency employees."

Currently, the Employer has twenty-three (23) regular full-time or "part-time associates working in the petitioned-for unit. These regular employees work in either the aforementioned "fill-rooms," the warehouse and/or on the packaging line. [8] Regular full-time associates of the Employer with more than 90 days employment in that status are eligible for Employer-

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[6] A "full-time associate" is defined by the Employer's "Associate Handbook" as being, "one who is regularly scheduled to work 30 or more hours per week."

[7] A "part time associate" is defined by the Employer's "Associate Handbook" as being "one who is regularly scheduled to work fewer than thirty hours per week."

[8] "Regular" employees currently employed by the Employer hold the following specific production and maintenance job titles: Production Line Workers (4); Production General (1); Machine Operators (5); QC Inspectors (5); QC Inspector lead Person (1); Warehouse Label Control/Batch Record Preparation (1); Mechanic/Machine Operator (1); Mechanic/Machine Operator Lead Persons (2); Warehouse/Production Line Lead Person (1); QC Lab/Receiving Inspector(1); and QC General-Lab/Stability/Receiving (1). The record demonstrates that all of these employees have been petitioned-for by the Petitioner and all fall under the rubric of the petitioned-for "production and maintenance" employees. For the purposes of clarity, however, in the unit specified in this Decision and Direction of Election, I will hereby refer to these employees as being encompassed within the unit of "all Production and Maintenance, Quality Control and Warehouse" employees.

maintained and Employer-contributed health, dental, short term disability, life, and accidental death and dismemberment insurance. Part-time associates and temporary agency employees working for the Employer are not eligible for such benefits.

The Employer's 23 person regular workforce is currently supplemented by an additional 16 or so petitioned-for temporaries. The record reveals that the three aforementioned staffing agencies (suppliers) hire temporaries for the Employer. The temporaries must be capable of meeting the Employer's articulated production standards. After being so hired, the temporaries report for work at the Employer's South Beloit, Illinois, facility, where they are assigned job duties and directed in their day-to-day employment by one of the Employer's supervisors who also supervise the work of the Employer's regular employees. The suppliers do not routinely have any supervisors on the Employer's work site, nor do they routinely directly monitor the work or production of any of the temporaries. Instead, Employer supervisors contact the suppliers as needed, informing them of any disciplinary issues needing attention, the progress of the temporaries' work, whether any more temporaries would be needed by the Employer, and/or whether the services of any of the temporaries then being used by the Employer would no longer be needed.

The record demonstrates that a majority of the temporaries utilized by the Employer are hired on an indefinite basis. They are usually brought on by the Employer to fill the Employer's general supplemental workload needs, with no particular articulated end-date to their employment. As noted by Employer President Koopman, "(w)e normally bring in extra people when we need them and then, as things start to slow down, we let them go or, you know, send them back to the temporary agency." In addition, the Employer sometimes notifies its temporary agency suppliers that it will need temporaries for a certain project, such as packaging and/or labeling syringes or will need the temporaries for a definite period of time (usually one or two weeks). However, as noted by Production Manager Starbuck, even in cases where temporaries were originally hired "for one particular job, . . . we have used them in other areas, if needed, to

help assist us . . . if someone calls in sick, vacation, other instances." In cases where a particular project ran longer than originally expected by the Employer, supplier agencies were told "that it's going to run longer, and they'll let us know if we can retain those people or if they'll need to replace them . . .with other temporaries that then we need to re-train." Under the circumstances, therefore, the record as a whole demonstrates that the temporaries used by the Employer are commonly employed by the Employer for an indefinite period of time.

The record further demonstrates that the petitioned-for temporaries work side-by-side with their petitioned-for "regular" co-workers in all areas of the facility, including the aforementioned fill rooms, the warehouse, and the packaging line. They perform the exact same type of work as the Employer's regular employees,[9] and they usually do so on the same shifts and under the same supervision. Similarly, temporaries receive the same type of FDA-mandated and Employer-provided training as received by regular employees. They are subject to the same dress code as their regular co-workers.[10] They use the same time clocks and time cards; they are subject to the same Employer-mandated search procedures; and they are subjected to the same type of FDA-mandated pre-employment drug screenings as their regular co-workers.[11]

The record demonstrates that the Employer's supervisors assign, direct and oversee the daily work of the temporaries, as well as of the regular employees. While there is no evidence that Employer supervisors take direct disciplinary action against temporaries, conduct or

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[9] The Temporaries are being utilized in the following production and maintenance job categories: Production Line Workers (13); Warehouse General Worker (2); and Warehouse General Worker PT (1).

[10] Regular employees have their names printed on the lab coats and their photographs on their badges. Temporary employees do not. However, when regular employees lose their badges, they wear the same type of badges as worn by temporaries. This usually lasts a few days until new badges can be procured for them.

[11] Temporaries have their drug tests taken by their suppliers. Regular employees of the Employer have their urine samples taken by the Employer.

performance problems are reported to the suppliers with an expectation of remedial action. [12] Temporaries considered unacceptable to the Employer are returned to the supplier, thereby terminating their employment with the Employer.

Wages paid to temporaries are based on the Employer's requirement to "reduce turnover and get the quality person that we need." The Employer routinely discusses these requirements with the staffing agencies it utilizes and is informed by them of what the going rate is, based on market pressures, for the type of temporary employees the Employer requires. Wage rates for the temporaries, as well as the fees the Employer will pay to the staffing agencies for their services, are then negotiated between the Employer and the suppliers. Regardless of the wage rates negotiated, however, the Employer has adjusted the pay that is provided to the temporaries through the suppliers.[13] Temporaries generally receive about $6.50 per hour for their services, which is about $0.50 less than the starting wage of regular full-time associates and are not ordinarily given periodic pay raises as are the Employer's regular employees.

Finally, while the record reveals that turnover rates among the temporaries can be high, and while many temporaries remain employed at the Employer's facility for comparatively short periods of time, the temporaries currently working for the Employer have an average

[12] The suppliers do have the authority to independently investigate and discipline the temporaries for any violations of the suppliers' own work rules (e.g., supplier attendance policies).

[13] Production Manager Starbuck testified, for example, that during his two-year tenure as a supervisor with the Employer, on at least one occasion the Employer had given a pay raise to a temporary employee.

employment tenure with the Employer of about 47 days.[14] Further, the record establishes that

[14] The current temporary agency employee with the highest longevity with the Employer is Sandra Helm. As of the date of the hearing, she had been with the Employer for 106 days. Conversely, at the time of the hearing, Jackie Tennant, another of the Employer's temporary agency Production Line Worker, had only been hired by the employer 8 days earlier. She had the fewest number of days of employment with the Employer of any currently employed temporary.

As regarding the number of days most temporary agency employees worked for the Employer, Mr. Koopman testified that the number fluctuated wildly. For example, he noted that the Employer has had temporary employees who worked for the Employer for as many as 610 days and 409 days. He also noted that they had had temporaries who worked for them for as few as 15 minutes.

Notwithstanding the fluctuations in the Employer's temporary work force, Respondent's Exhibits B, C and D provide some insight into the question of the employment tenure of the temporaries. These exhibits list the names and length of employment for certain of the temporaries sent to the Employer's facility by each of the three aforementioned staffing agency suppliers. Together, these records reveal that the average amount of time each temporary spent employed with the Employer was about 30 days. However, the additional following observations of these records may also be made:

Exhibit D, the record of Furst Staffing, reveals that for the period of July 1, 2000 through June 30, 2001, Furst Staffing sent a total of 19 different temporaries to work for the Employer, having an overall average tenure with the Employer of about 52 days. The record further reveals that of the 19 temporaries sent by Furst to the Employer, 3 were still working for the Employer as temporaries and 2 had been converted to "regular" status. These 5 employees had a combined average employment tenure of about 173 days with the Employer. Of the remaining 14 temporaries sent by Furst to the Employer, 4 had been terminated from their service with the Employer for cause (e.g., due to poor attendance or failing to meet the Employer's performance standards). These 4 employees had an average employment tenure with the Employer of about 2.6 days. Five of the employees sent to the Employer by Furst quit the Employer for their own reasons. These five temporaries had an average employment tenure with the Employer of just over 15 days. Finally, of the 19 temporaries sent to the Employer by Furst, only five were laid off and not recalled by the Employer because of a lack of work. These five employees had an average employment tenure with the Employer of about 25 days.

Exhibit C, the record of Ablest Staffing, reveals that for the period of September 9, 2000 through July 10, 2001, a total of 83 temporaries were sent by Ablest to the Employer, having an overall average tenure with the Employer of about 25 days. Neither the record nor Exhibit C reveal the reason(s) any of these temporaries left the services of the Employer. (The record is similarly unclear whether any of the Employer's currently employed regular employees began their tenure as temporaries sent by Ablest.) However, the record does reveal that, at least as of the date Exhibit C was prepared, 10 of the temporaries sent by Ablest to the Employer were still working for the Employer. These 10 temporaries had an average tenure with the Employer of just over 60 days. Of the remaining 73 or so temporaries sent to the Employer by Ablest, it appears that 35 temporaries worked for the Employer for one week or less; averaging 2.6 days each. Many of these temporaries worked only one day for the Employer and, as noted herein, the record is unclear why they left the Employer's service. The remaining 38 or so temporaries sent to the Employer by Ablest worked, on average, about 48 days for the Employer.

Exhibit B, the record of QPS Staffing, reveals that for the period of March 26, 2001 through July 3, 2001, a total of 9 temporaries were sent by QPS to the Employer, working an average of about 38 days. The Exhibit does not reveal the reason any of the temporaries listed therein left the services of the Employer. (The record is also unclear whether any of the Employer's currently employed regular employees began their tenure as temporaries from the QPS agency.) However, the record does reveal that, at least as of the date the record was prepared, 4 of the temporaries listed still worked for the Employer, having an average tenure with the Employer of about 68 days. The remaining five temporaries sent to the Employer by QPS had an average tenure with the Employer of about 16 days.

temporaries may be notified, when they start with the Employer, "that there's a possibility of (regular) employment" with the Employer. The Employer's supervisors routinely, informally evaluate the work performance of each of the temporaries, as well as their potential for "regular" employment with the Employer.[15] The staffing agencies have no input into the Employer's evaluations. Additionally, the record reveals that about one-third of the Employer's regular work began their employment with the Employer as temporaries. [16] Finally, according to the Employer, temporaries are the sole hiring source for the Employer's regular production line employees. [17]

DISCUSSION

Section 9(a) of the National Labor Relations Act provides "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of employees in a unit

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[15] Performance evaluations of temporary employees are accomplished by the Employer's supervisors. The evaluations of temporaries are informal in nature, with the Employer's supervisors visually observing the work performance of the temporaries. These evaluations are not reduced to writing.

When a temporary employee's performance does not measure up to the standards set by the Employer, the temporary employee is sent home and the staffing agency responsible for originally sending the temporary to the Employer was told not to send that temporary to the Employer again. In all cases the three staffing agencies used by the Employer have complied with such demands.

The Employer also uses its informal evaluations of the temporaries to determine whether to change the status of the temporaries to that of a regular employee.

To the extent the staffing agencies provide performance evaluations to the temporaries, the work performance inputs for these evaluations come directly from the observations of the Employer's supervisors.

In contrast to the temporaries' performance evaluations, regular employee evaluations are written. These evaluations are prepared by the same supervisors who informally rate the temporaries.

[16] Employees with as few as 97 days employment with the Employer as temporaries have had their status changed by the Employer to regular employees. The factor primarily determining when the Employer might directly hire a temporary agency employee was the penalty clause contained in each of the contracts the Employer had with the staffing agencies. That is, each contract between the Employer and the staffing agencies had a clause stating that if the Employer directly employed one of the temporary employees sent by a staffing agency, and did so within a specified number of days, the Employer would have to pay the staffing company a penalty fee. The Employer has refused to directly hire temporaries until the penalty date had expired. This date fluctuated between the staffing agencies.

[17] However, in or around May 2001, the Employer ran an ad for employees in a local newspaper. It hired seven regular production and maintenance employees as a result of this ad.

appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment…." 29 U.S.C. Section 159(a). In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the stature requires that the unit be the only appropriate unit or the most appropriate unit. See *Morand Brothers Beverage Co.,* 91 NLRB 409, 418 (1950). The Act only requires that the unit sought be an appropriate unit for the purposes of collective bargaining. See *National Cash Register Co.,* 166 NLRB 173, 174 (1966).

The issue in this case is whether the temporaries--supplied by various suppliers to the user Employer--may be included in a unit of the user Employer's solely-employed employees. This analysis is governed by *M.B. Sturgis,* 331 NLRB No. 173 (2000) and its progeny, which require traditional community of interest factors to be applied. In the instant case, the common working conditions between the regular employees and the temporaries are sufficient to require their inclusion in the unit found appropriate. In applying a community of interest test, the Board analyzes bargaining history, functional integration, employee interchange, employee skills, work performed, common supervision and similarity in wages, hours, benefits and other terms and conditions of employment. See: *J.C. Penney Co.,* 328 NLRB No. 105 (1999); and *Armco, Inc.,* 271 NLRB 350, 351 (1984). Here, the record clearly discloses that the temporary employees share a high degree of interest with the regular employees of the Employer, including a high degree of functional integration, interchangeability, and work related contact.

As urged by the Employer in its brief, the Employer's regular and temporary employees have not insignificantly dissimilar terms and conditions of employment. For example, the suppliers actually hire the temporaries, the temporaries receive slightly lower hourly wage rates than starting regular employees, temporaries are ineligible for certain Employer benefits and seniority, and they may be subordinate to not only the Employer's rules, but to the disciplinary

rules of the supplier agencies as well. However, these dissimilar terms and conditions of employment are substantially outweighed by the many common terms and conditions of employment they share with the Employer's regular employees. As noted above, although the suppliers hire temporaries, the hiring is based on acceptance of Employer standards. Further, the temporaries work side-by-side with regular production employees, they perform the same work functions and are supervised by the same supervisors. The Employer has two shifts, and the temporaries, like their regular co-workers, are assigned to both. Further, regular and temporary employees work in the same plant areas, are part of the same production operation, take their breaks in rotation with one another, eat their meals at the same time and in the same places as one another, and they are both subject to being periodically laid off due to the same economic reasons.[18] Even to the extent that certain "regular" employees receive benefits that temporaries do not, it is clear that not all "regular" employees receive such benefits. In fact, regular part-time employees of the Employer find themselves in a virtually identical situation with their temporary co-workers, to wit: they are "at will" employees with identical working conditions, no benefits and similar pay scales. I find, therefore, that the temporaries' slightly lower wages, lack of benefits, lack of seniority, and different disciplinary policies are insufficient to exclude the temporaries from the unit found appropriate. As such, I therefore, conclude that the temporaries share such a strong community of interest with the employees in the unit found appropriate that their inclusion is warranted.

[18] In this regard, the record establishes that over the past five years or so, on perhaps "a dozen times," both regular and temporary production line employees have been laid off due to the exigencies of the economic environment. When such layoffs were undertaken, the Employer let temporary employees go first. As regarding the future, the Employer currently anticipates that it will undergo a reduction in its temporary work force sometime in the foreseeable future. This is due to the introduction of new equipment at the facility. The Employer is not exactly sure when this equipment will be installed, nor when it will be "validated" and ready for use. In the meantime, the Employer has not notified any of the temporaries currently working at its facility if or when they will have their employment services terminated with the Employer.

The Employer's reliance upon *Outokumpu Copper Franklin, Inc.,* 334 NLRB No. 39 (June 6, 2001) to support its position that the temporary employees do not share a community of interest with the Employer's regular employees and not should be included in the unit is misplaced. Contrary to the position of the Employer, in *Outokumpu,* the Board held that the temporary employees supplied to *Outokumpu* from three staffing agencies shared a community of interest and should be included in the voting unit because the temporary employees worked side-by-side with the employer's production and maintenance employees in all areas of the plant, the employer's supervisors had authority to discipline, discharge and send home the temporaries, the employer's supervisors evaluated temporaries for future employment, and the temporaries were the sole source for the employer's regular production and maintenance employees. See: *Outokumpu*, 334 NLRB No. 39, slip op. at 1-2. Many of these factors weigh in favor of including the instant temporaries in the voting unit.

In addition, other factors described above warrant the finding that the instant temporary and regular employees of the Employer share a sufficient community of interest with one another to be included in the same voting unit. Significant is the fact that a substantial number of "regular employees" are converted temporaries. The Board has held that such a fact supports a finding of temporary employee inclusion in a voting unit. See: *Interstate Warehousing of Ohio, LLC,* 333 NLRB No. 83 (March 27, 2001), slip op. at 6.

In view of the above and the record as a whole, and having carefully considered the traditional community of interest factors relied on by the Board, I find that the petitioned-for temporary employees supplied by the three supplier agencies to the Employer share a community of interest with the Employer's regular hourly employees and should be included in the unit found appropriate herein. See *Outokumpu*, supra; *Interstate Warehousing of Ohio, LLC,* supra; bat c/f/. *Holiday Inn City* Center, 332 NLRB No. 128 (2000).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time and temporary agency, production and maintenance, quality control and warehouse employees employed by the Employer at its South Beloit facility, but excluding all office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Steelworkers of America, AFL-CIO, CLC.

ELECTION NOTICES

In accordance with Section 102.30 of the Board's Rules and Regulations, the Employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. These notices are to remain posted

until the end of the election. Failure to post the election notices as required will be grounds for setting aside the election whenever proper and timely objections are filed. A party is estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice. As used in this paragraph, the term "working day" means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.,*** 156 NLRB 1236 (1966); ***N.L.R.B.*** *v.* ***Wyman-Gordon Company,*** 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Subregion 33 within 7 days of the date of this Decision and Direction of Election. ***North Macon Health Care Facility***, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Subregional Office at Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602, on or before **August 13, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **2** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary

checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Subregional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 20, 2001.

Dated August 6, 2001
at: Peoria, Illinois

/s/

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Ralph R. Tremain, Regional Director
Region 14

Classification Index Code: 177-1650-0100

Issued 8/6/2001